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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

Minas Diakakis, *on behalf of himself and  
others similarly situated,*

*Plaintiff,*

-v-

Superior Stone & Interiors, LLC, Konstantinos  
Manasakis, and Markos Theodorakis, *jointly  
and severally,*  
*Defendants.*

Civil Case No.:

**FLSA COLLECTIVE ACTION**

**COMPLAINT**

**NATURE OF THE ACTION**

1. Plaintiff Minas Diakakis ("Plaintiff"), brings this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et. seq.* in order to remedy Defendants' wrongful withholding of Plaintiff's lawfully earned wages and overtime compensation. Plaintiff also brings these claims under New York Labor Law ("NYLL"), Article 6, §§ 190 *et seq.*, and Article 19 §§ 650 *et seq.* as well as the supporting New York State Department of Labor Regulations for violations of minimum wages, overtime wages, spread-of-hours pay and notice and record-keeping requirements. Finally, Plaintiff brings a claim for breach of contract.

**SUMMARY**

2. Plaintiff was employed by Defendants, Superior Stone & Interiors, LLC, Konstantinos Manasakis, and Markos Theodorakis as a mason.

3. Defendants have repeatedly deprived Plaintiff of his minimum and overtime compensation and his spread-of-hours pay.

4. Prior to the commencement of his employment, there was a verbal agreement between Plaintiff and Defendants that he would be remunerated at a rate of \$65 per hour for all his hours of work.

5. Plaintiff was employed for a total of three (3) weeks in which he received no payment at all for his work.

6. Plaintiff worked approximately 60 hours per week.

7. Defendants engaged in their unlawful conduct pursuant to a corporate policy of minimizing labor costs and denying employees compensation by knowingly violating the FLSA and NYLL.

8. As a result of Defendants' actions, Plaintiff has suffered great hardship and damages.

9. Defendants' conduct extended beyond Plaintiff to all other similarly situated employees. Plaintiff seeks certification of his FLSA claims as a collective action on behalf of himself individually and those other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216 (b).

**JURISDICTION AND VENUE**

**Federal Question Jurisdiction and Supplemental Jurisdiction**

10. This Court has original subject matter jurisdiction over this action under 28

1 U.S.C. § 1331 because the civil action herein arises under the laws of the United States,  
2 namely, the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* Additionally, this Court also  
3 has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367(a).

4 **Personal Jurisdiction**

5 11. This Court may properly maintain personal jurisdiction over Defendants under  
6 Rule 4 of the Federal Rules of Civil Procedure because Defendants' contacts with this state and  
7 this judicial district are sufficient for exercise of jurisdiction over Defendants so as to comply  
8 with traditional notions of fair play and substantial justice.

9 **Venue**

10 12. Venue is proper in the Eastern District of New York under 8 U.S.C. §§ 1391 (b)  
11 (1) and (2) because Defendants reside and conduct business in this judicial district and because  
12 a substantial part of the acts or omissions giving rise to the claims set forth herein occurred in  
13 this judicial district.

14 **THE PARTIES**

15 **Plaintiff**

16 **Minas Diakakis**

17 13. Plaintiff Minas Diakakis ("Diakakis") is an adult individual residing in the state  
18 of New York, County of Bronx.

19 14. Diakakis is a covered employee within the meaning of the FLSA, 29 U.S.C. §  
20 203(e) and the NYLL § 190.

21 15. Diakakis was employed as a mason at Superior Stone & Interiors, LLC, owned  
22 by Defendants, located at 15 Catherine Avenue, Franklin Square NY 11010.

23 16. Diakakis worked for Defendants in August 2016 for three weeks.

1           17.     Diakakis regularly handled goods in interstate commerce, such as marble and  
2 tiles imported from outside the State of New York.

3           18.     Prior to the commencement of his employment, there was a verbal agreement  
4 between Plaintiff and Defendants that he would be remunerated at a rate of \$65 per hour for all  
5 his hours of work.

6           19.     For the three week period in August, Diakakis worked an average of 12 hours  
7 per day from 7:00 a.m. to 7:00 p.m. amounting to 60 hours per week.

8           20.     Specifically, Diakakis would arrive to Defendant's store in Franklin Square  
9 around 7:00 a.m. where he would cut the marble and load the truck with the supplies required  
10 for the day's job. He then would drive from Long Island to the job site located at 834 Fifth  
11 Avenue New York, NY 10065, where he would install the marble on the floor and walls of  
12 bathrooms until 4:00 p.m. Diakakis would then drive back to Defendants' store in Franklin  
13 Square to perform additional work and he would leave the store around 7:00 p.m.

14           21.     Diakakis' schedule was set by Defendants Konstantinos Manasakis and Markos  
15 Theodorakis.

16           22.     Throughout this entire period, Diakakis was not paid at all for his regular or  
17 overtime hours worked, nor was he given any spread-of-hours pay.

18           23.     As a result of non-payment, he was forced to quit his employment.

19           24.     Ever since his resignation, he repeatedly asked to be paid his wages but he was  
20 not paid anything.

21           25.     Diakakis was not provided with a notice containing the rate and basis of his pay;  
22 the designated pay date; and the employer's name, address and telephone number at the time of  
23 hiring or at any point thereafter.



1 e. Defendants each had functional and/or formal control over the terms and  
2 conditions of work of Plaintiff and similarly situated employees.

3 f. Plaintiff and similarly situated employees performed work integral to  
4 Corporate Defendant's operation.

5 32. In the alternative, Defendants functioned together as a single integrated employer  
6 of Plaintiff within the meaning of the FLSA and NYLL.

7 **(Corporate Defendant)**

8 **Superior Stone & Interiors, LLC**

9  
10 33. Superior Stone & Interiors, LLC ("Superior Stone") is a domestic corporation  
11 formed on October 27, 2014, organized and existing under the laws of the State of New York.

12 34. Superior Stone owns and operates a marble stone fabrication and installation  
13 business located at 15 Catherine Avenue, Franklin Square NY 11010.

14 35. Superior Stone employs numerous full-time employees and is involved in many  
15 upscale commercial projects throughout New York City.

16 36. At all relevant times, Superior Stone was a covered employer within the  
17 meaning of the FLSA, 29 U.S.C. § 203(d) and the NYLL § 190.

18 37. At all relevant times, Superior Stone maintained control, oversight, and  
19 direction over the Plaintiff, including timekeeping, payroll and other employment practices that  
20 applied to him.

21 38. At all relevant times, Superior Stone was "an enterprise engaged in commerce"  
22 within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(A) because its employees were  
23 handling marble stone imported out of state and distributed in New York. In addition, Superior  
24 Stone conducted business with vendors and other businesses outside the state of New York and  
25 engaged in credit card transactions involving banks and other institutions outside the state of  
26  
27  
28

1 New York.

2 39. Upon information and belief, at all relevant times, Superior Stone's annual gross  
3 volume of sales made, or business done, was not less than \$500,000.00, exclusive of separate  
4 retail excise taxes, within the meaning of the FLSA, 29 U.S.C. § 203(s)(1)(a)(ii).

5  
6 **(Individual Defendants)**

7 **Konstantinos Manasakis**

8 40. Upon information and belief, at all relevant times, Konstantinos Manasakis  
9 "Manasakis" was the owner, principal, authorized operator, manager, shareholder and/or agent  
10 of Corporate Defendant.

11 41. At all relevant times throughout Plaintiff's employment, Manasakis had the  
12 discretionary power to create and enforce personnel decisions on behalf of the Corporate  
13 Defendant, including but not limited to: hiring and terminating employees; setting and  
14 authorizing issuance of wages; maintaining employee records; setting Plaintiff's schedule;  
15 negotiating Plaintiff's rate of pay; instructing, supervising and training Plaintiff; and otherwise  
16 controlling the terms and conditions for the Plaintiff while he was employed by Defendants.  
17

18 42. At all relevant times throughout Plaintiff's employment, Manasakis was  
19 actively involved in the day-to-day operations of the Corporate Defendant.  
20

21 43. At all relevant times throughout Plaintiff's employment, Manasakis was a  
22 "covered employer" within the meaning of the FLSA and the NYLL, and employed or jointly  
23 employed Plaintiff, and is personally liable for the unpaid wages sought herein, pursuant to 29  
24 U.S.C. § 203(d).  
25

26 **Markos Theodorakis**

27 44. Upon information and belief, at all relevant times, Markos Theodorakis  
28

1 ("Theodorakis") was a co-owner, principal, authorized operator, manager, shareholder and/or  
2 agent of Corporate Defendant.

3 45. At all relevant times throughout Plaintiff's employment, Theodorakis had the  
4 discretionary power to create and enforce personnel decisions on behalf of the Corporate  
5 Defendants, including but not limited to: hiring and terminating employees; setting and  
6 authorizing issuance of wages; maintaining employee records; setting Plaintiff's schedule;  
7 negotiating Plaintiff's rate of pay; instructing, training and supervising Plaintiff; and otherwise  
8 controlling the terms and conditions for the Plaintiff while he was employed by Defendants.  
9

10 46. At all relevant times throughout Plaintiff's employment, Theodorakis was  
11 actively involved in the day-to-day operations of the Corporate Defendant.  
12

13 47. At all relevant times throughout Plaintiff's employment, Theodorakis was a  
14 "covered employer" within the meaning of the FLSA and the NYLL, and employed or jointly  
15 employed Plaintiff, and is personally liable for the unpaid wages sought herein, pursuant to 29  
16 U.S.C. § 203(d).  
17

### 18 **COLLECTIVE ACTION ALLEGATIONS**

19 48. Pursuant to 29 U.S.C. §§ 203, 206, 207 and 216(b), Plaintiff brings his  
20 First and Second Causes of Action as a collective action under the FLSA on behalf of himself  
21 and the following collective:

22 All persons employed by Defendants at any time since October 22,  
23 2013 and through the entry of judgment in this case (the  
24 "Collective Action Period") who worked as helpers, stone cutters,  
25 and all other non-exempt employees (the "Collective Action  
26 Members").  
27  
28





1           56. Defendants failed to pay Plaintiff, and the Collective Action Members, their  
2 earned minimum wages for all hours worked to which they were entitled to under the FLSA.

3           57. In fact, Defendants did not pay the Plaintiff at all for his hours worked.

4           58. As a result of Defendants' violations of the FLSA, Plaintiff and the Collective  
5 Action Members have suffered damages by being denied minimum wages in accordance with  
6 the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts,  
7 liquidated damages, reasonable attorneys' fees, costs, and other compensation pursuant to 29  
8 U.S.C. § 216 (b).  
9

10           59. Defendants' unlawful conduct, as described in this Complaint, has been willful  
11 and intentional. Defendants were aware, or should have been aware, that the practices  
12 described in this Complaint were unlawful.  
13

14           60. Defendants have not made a good faith effort to comply with the FLSA with  
15 respect to the compensation of the Plaintiff and the Collective Action Members.  
16

17           61. Defendants failed to post or keep posted conspicuous notices of Plaintiff's rights  
18 as required by the U.S. Department of Labor pursuant to 29 C.F.R. § 516.4, further evincing  
19 Defendants' lack of good faith.

20           62. Because Defendants' violations of the FLSA have been willful, a three-year  
21 statute of limitations applies pursuant to 29 U.S.C. § 255(a).  
22

## 23                           **SECOND CAUSE OF ACTION**

### 24                           **Fair Labor Standards Act – Unpaid Overtime Wages**

25           63. Plaintiff and the Collective Action Members reallege and incorporate by reference  
26 the allegations made in all preceding paragraphs as if fully set forth herein.  
27  
28

1           64. The overtime wage provisions set forth in the FLSA, 29 U.S.C. § 207 (a)(1) and  
2 the supporting federal regulations, apply to Defendants and protect Plaintiff and the Collective  
3 Action Members.

4           65. Defendants have failed to pay Plaintiff and the Collective Action Members  
5 overtime wages at a rate of one and one-half times the regular rate at which they were  
6 employed for but under no instance less than one and one-half times the statutory minimum  
7 wage for all of the hours that they worked in excess of forty (40) hours per workweek.  
8

9           66. As a result of Defendants' violations of the FLSA, Plaintiff and the Collective  
10 Action Members have been deprived of overtime compensation and other wages in amounts to  
11 be determined at trial, and are entitled to recovery of such amounts, liquidated damages,  
12 attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216 (b).  
13

14                           **THIRD CAUSE OF ACTION**

15                           **New York Labor Law – Minimum Wage**

16           67. Plaintiff realleges and incorporates by reference all allegations in all preceding  
17 paragraphs.  
18

19           68. Defendants have engaged in a widespread pattern, policy, and practice of  
20 violating the NYLL, as detailed in this Complaint.

21           69. At all relevant times referenced herein, Plaintiff had been an employee of  
22 Defendants, and Defendants have been employers of Plaintiff within the meaning of the NYLL  
23 §§ 190, 651 (5), 652, and the supporting New York State Department of Labor Regulations.  
24

25           70. The minimum wage provisions of Article 19 of the NYLL and the supporting  
26 New York State Department of Labor Regulations apply to Defendants, and protect Plaintiff.  
27  
28

1           71. From December 31, 2015 onwards, the minimum hourly wage in the State of  
2 New York is \$9.00 pursuant to NYLL § 652 and the New York State Department of Labor  
3 Regulations, 12 N.Y.C.R.R. Part 142-2.1.

4           72. Defendants were required to pay Plaintiff no less than the applicable statutory  
5 minimum wage for all hours worked under the NYLL § 652 and the supporting New York  
6 State Department of Labor regulations, 12 N.Y.C.R.R. Part 142-2.1.

7           73. Through their knowing and intentional failure to pay any wages to Plaintiff,  
8 Defendants have violated the NYLL Article 19, §§ 650 *et seq.*, and 12 N.Y.C.R.R. Part 142-  
9 2.1.  
10

11           74. Defendants also failed to post conspicuous notices of the Plaintiff's rights under  
12 the law, as required by the NYLL § 661 and the New York State Department of Labor  
13 Regulations, 12 N.Y.C.R.R. Part 142-2.8, further evincing Defendants' lack of good faith.  
14

15           75. Defendants' failure to pay Plaintiff at least at minimum wage was willful within  
16 the meaning of NYLL § 663.  
17

18           76. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from  
19 Defendants his unpaid minimum wages, liquidated damages as provided for by the NYLL,  
20 reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest, pursuant to  
21 NYLL § 198 (1-a).  
22

#### 23                           **FOURTH CAUSE OF ACTION**

##### 24                           **New York Labor Law – Unpaid Overtime Wages**

25           77. Plaintiff realleges and incorporates by reference all allegations in all preceding  
26 paragraphs.  
27  
28



65. The spread-of-hours provisions as set forth in NYLL §§ 190 *et seq.* and the supporting New York State Department of Labor Regulations apply to Defendants and protect Plaintiff.

66. Defendants have failed to pay Plaintiff spread-of-hours compensation of one hour's pay at the basic minimum hourly wage rate for each day during which Plaintiff worked a shift exceeding ten (10) hours, as defined by the New York State Department of Labor regulations, 12 N.Y.C.R.R. Part 142-2.4.

67. Through their knowing or intentional failure to pay Plaintiff spread-of-hours compensation, Defendants have willfully violated the NYLL §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

68. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from Defendants his unpaid spread-of-hours pay, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest, pursuant to NYLL § 198 (1-a).

### **SIXTH CAUSE OF ACTION**

#### **New York Labor Law– Failure to Provide Notice at the Time of Hiring**

83. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

84. Defendants have failed to provide Plaintiff at the time of hiring or at any point thereafter, a notice containing the rate of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; the regular pay day designated by the employer; the physical address of the employer's main office or principal place of business; the

1 telephone number of the employer, and anything otherwise required by law, in violation of  
2 NYLL § 195(1).

3 85. Due to Defendants' violations of the NYLL § 195(1), Plaintiff is entitled to  
4 recover from Defendants statutory damages of Fifty dollars (\$50) per workday that the  
5 violation occurred, up to a maximum of Five Thousand Dollars (\$5,000), pursuant to NYLL §  
6 198 (1-b).  
7

### 8 **SEVENTH CAUSE OF ACTION**

#### 9 **New York Labor Law– Failure to Provide Wage Statements**

10 86. Plaintiff realleges and incorporates by reference all allegations in all preceding  
11 paragraphs.  
12

13 87. Defendants have failed to provide Plaintiff with wage statements listing his rate  
14 of pay; basis of pay; the period covered; and overtime pay, in violation of NYLL § 195(3).  
15

16 88. Due to Defendants' violations of the NYLL, Plaintiff is entitled to recover from  
17 Defendants statutory damages of Two Hundred and Fifty dollars (\$250) per workday that the  
18 violation occurred, up to a maximum of Five Thousand Dollars (\$5,000), pursuant to NYLL §  
19 198 (1-d).  
20

### 21 **EIGHTH CAUSE OF ACTION**

#### 22 **New York State Common Law - Breach of contract**

23 89. Plaintiff realleges and incorporates by reference all allegations in all preceding  
24 paragraphs.  
25

26 90. An enforceable agreement existed between Plaintiff and Defendants whereby  
27 Plaintiff agreed to perform work for Defendants and, in turn, be remunerated at a rate of sixty-  
28 five Dollars (\$65) per hour for all hours worked.





1 D. Unpaid minimum and overtime wages, and spread-of-hours pay under NYLL,  
2 and an additional and equal amount as liquidated damages pursuant to NYLL § 198(1-a) and §  
3 663(1);

4 E. Civil penalties of One Thousand One Hundred Dollars (\$1,100) for each of  
5 Defendants' willful and repeated violations of the FLSA pursuant to 29 U.S.C. § 216(b);  
6

7 F. An award of statutory damages for Defendants' failure to provide Plaintiff with  
8 a wage notice at the time of hiring pursuant to NYLL § 198 (1-b);

9 G. An award of statutory damages for Defendants' failure to provide Plaintiff with  
10 wage statements pursuant to NYLL § 198 (1-d);  
11

12 H. Compensatory damages due to Defendants' breach of contract in an amount to  
13 be determined at trial;

14 I. A permanent injunction requiring Defendants to pay all statutorily required  
15 wages pursuant to the FLSA and NYLL;  
16

17 J. If liquidated damages pursuant to FLSA, 29 U.S.C. § 216(b), are not awarded,  
18 an award of prejudgment interest pursuant to 28 U.S.C. § 1961;

19 K. An award of pre-judgment interest of nine per centum per annum (9%) pursuant  
20 to the New York Civil Practice Law and Rules §§ 5001-5004;

21 L. An award of post-judgment interest pursuant to 28 U.S.C. § 1961 and/or the  
22 New York Civil Practice Law and Rules § 5003;  
23

24 M. An award of attorney's fees, costs, and further expenses up to fifty dollars,  
25 pursuant to 29 U.S.C. § 216(b), and NYLL §§ 198 and 663(1);

26 N. Such other relief as this Court shall deem just and proper.  
27  
28

1 Dated: Astoria, New York  
2 October 22, 2016

3 Respectfully submitted,  
4 **PARDALIS & NOHAVICKA, LLP**

5  
6 By: /s/Ariadne Panagopoulou  
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NOTICE OF CONSENT TO JOIN, PURSUANT TO 29 U.S.C. §216(b)

FAIR LABOR STANDARDS ACT CONSENT FORM

I consent to be a party plaintiff in a lawsuit against Superior Stone & Interiors LLC and/or related entities and individuals in order to seek redress for violations of Fair Labor Standards Act, pursuant to 29 U.S.C. section §216(b). I hereby designate **Pardalis & Nohavicka LLP** to represent me in such a lawsuit.

Dated: 10/7/2016

Signature



Print

Minas Diakakis

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